

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7647

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NEW YORK OFFICE
WASHINGTON AVENUE
NEW YORK, NY 10174

October 25, 2000

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VIA HAND DELIVERY

Magalie Roman Salas
Commission Secretary
Federal Communications Commission
Portals II
445 12th Street, S.W., Suite TW-A325
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

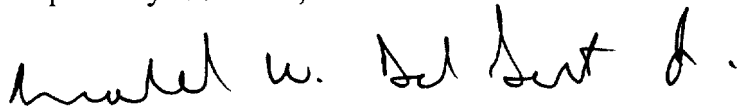
**Re: File No. NSD-L-00-171; CC Docket No. 96-98;
Comments of Starpower Communications, LLC**

Dear Secretary Salas:

On behalf of Starpower Communications, LLC ("Starpower"), enclosed please find an original and four (4) copies of Starpower's comments in the above-referenced docket. Please date stamp and return the enclosed extra copy. Concurrent with this filing, Starpower is submitting two (2) copies of its comments to the Network Services Division.

Should you have any questions with respect to this matter, please do not hesitate to call Ron Del Sesto at (202) 945-6923.

Respectfully submitted,



Ronald W. Del Sesto, Jr.

Counsel for Starpower Communications, LLC

Enclosure

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)	
)	File No. NSD-L-00-171
Maryland Public Service Commission)	
Petition for Delegated Authority to)	
Implement Number Conservation)	CC Docket No. 96-98
Measures)	

OCT 25 2000

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**COMMENTS OF
STARPOWER COMMUNICATIONS, LLC**

Starpower Communications, LLC ("Starpower") by undersigned counsel and pursuant to the Common Carrier Bureau's September 25, 2000 Public Notice,¹ submits its Comments in the above-captioned proceeding.

I. Introduction

As a provider of telecommunications services in the State of Maryland, Starpower is well aware of the problems caused by number exhaust. Starpower is dependent upon access to numbering resources both to initiate and expand its services offerings. Starpower's ability to compete effectively for new customers, and to continue to serve the needs of existing customers in an efficient and cost effective manner, is wholly dependent upon its ability to obtain non-discriminatory and timely access to numbering resources. As a result, Starpower is acutely aware of the effects of the number shortages now being experienced in Maryland.

¹ *Common Carrier Bureau Seeks Comment on the Maryland Public Service Commission Petition for Delegated Authority to Implement Number Conservation Measures*, NSD File No. L-00-171, Public Notice, DA 00-2176 (rel. Sept. 25, 2000) ("*Petition*").

Starpower supports the efforts of the Maryland Public Service Commission (“PSC”) to address the problem of number exhaust. Starpower expects that the Federal Communications Commission (“FCC”) will grant additional delegated authority to the PSC that is consistent with its prior orders issued in response to petitions filed by numerous other state commissions.² While Starpower does not support every aspect of the FCC’s prior orders, Starpower will not repeat past arguments in this filing. Instead, Starpower will focus on issues related to the implementation of number conservation measures by state commissions that have received delegated authority and suggest that the FCC tailor any grant of authority it provides to the PSC to address some of the issues that have already arisen in other states. Further, Starpower requests that the FCC require that the PSC’s pooling trial conform to the national framework set out in the FCC’s *Numbering Order*. In addition, Starpower requests that the FCC direct the PSC to reserve a pool of NXX codes for facilities-based providers. Starpower recommends that the FCC deny: (1) the PSC’s request to maintain rationing procedures for six months following the implementation of area code relief; (2) the PSC’s request to establish fill rates for carriers, and; (3) other requests for authority that have either been already granted to the state commissions or superceded due to implementation at the national level.

² See, e.g., *Connecticut Dept. of Pub. Util. Control Petition for Delegation of Additional Authority to Implement Area Code Conservation Measures*, CC Docket No. 96-98 (rel. Nov. 30, 1999); *New Hampshire Pub. Utils. Comm’n Petition for Additional Delegated Authority to Implement Number Optimization Measures*, CC Docket No. 96-98 (rel. Nov. 30, 1999); *Petition of the Ohio Pub. Utils. Comm’n for Delegation of Additional Authority to Implement Number Conservation Measures* (rel. Nov. 30, 1999); *Petition of the Pub. Util. Comm’n of Texas for Expedited Decision for Authority to Implement Number Conservation*, CC Docket No. 96-98 (rel. Nov. 30, 1999); *Petition of the Pub. Service Comm’n of Wisconsin for Delegation of Additional Number Conservation Measures* (rel. Nov. 30, 1999); *California Pub. Utils. Comm’n Petition for Delegation of Additional Authority Pertaining to Area Code Relief*, CC Docket No. 96-98, FCC 99-248 (rel. Sept. 15, 1999) (“*California Delegation Order*”); *Florida Pub. Service Comm’n Petition to Federal Communications Comm’n for Expedited Decision for Grant of Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, FCC 99-249 (rel. Sept. 15, 1999); *Massachusetts Dept. of Telecom. and Energy’s Petition for Waiver of Section 52.19*, CC Docket No. 96-98, FCC 99-246 (rel. Sept. 15, 1999); *New York State Dept. of Pub. Service Petition for Additional Delegated Authority to Implement Number Conservation Measures*, CC Docket No. 96-98, FCC 99-247 (rel. Sept. 15, 1999); *Maine Pub. Utils. Comm’n Petition for Additional Delegated Authority to Implement Number Conservation*, CC Docket No. 96-98, FCC 99-260 (rel. Sept. 28, 1999).

II. The FCC Should Clarify the Delegated Authority that State Commission's Possess in Expanding Pooling Trials

While the FCC has granted numerous state commissions the authority to engage in thousands block number pooling, Starpower requests that the FCC clarify its delegation of authority in the expansion of pooling trials. In granting various state commissions authority to engage in thousands block number pooling trials, the FCC has also made clear that only after full implementation in one MSA may state commissions expand the trial to additional MSAs. Carriers must engage in various time consuming tasks in order to prepare for a number pooling trial. For carriers operating in multiple states that are also implementing number pooling trials, carriers must commit valuable resources to such efforts. The industry must be able to take all the necessary steps that are required for such implementation. It is impossible to predict the complications that will arise in each MSA as well as to forecast the demand for ported numbers. Some state commissions have interpreted the FCC's delegation of authority to mean that so long as a number pooling trial has been initiated in a certain MSA, they may then expand the trial into another MSA before fully implementing the number pooling trial in the original MSA. Given the uncertainties of the pooling process, state commission must allow carriers time to prepare for number pooling and implement trials one MSA at a time.

Starpower requests that if the FCC grants the PSC authority to implement number pooling trials then the FCC should require that the trial follow the national framework set out in the FCC's *Numbering Order*. Since implementation of nationwide number pooling should occur within the next year, it would be a waste of time and money for carriers to have to transition from a pooling trial on the state level that is inconsistent with national standards.

Starpower further requests that the FCC direct the state commissions to reserve a pool of initial NXX codes for facilities-based providers, that is, carriers that actually construct their networks

as opposed to those that purchased unbundled network elements (“UNEs”). Carriers that engage in the construction of their own networks cannot use codes as quickly as those that rely on UNEs to provide service. The FCC’s new rules governing the distribution of numbering resources require carriers to verify their need for numbering resources in order to obtain initial numbering codes.³ Carriers receive initial codes if the carrier is able to provide service within sixty (60) days of activating the numbering resources. Carriers that provide service through UNEs need only to enter into an interconnection agreement with a facilities-based provider to be in the position to request codes. However, carriers that build their own networks must purchase and install all of the equipment necessary to provide telecommunications services. Installing facilities also requires that constructing carriers obtain the necessary rights-of-way permits and other time-consuming tasks that are unique to companies engaged in the building out of their own network. Thus, such carriers are at a distinct disadvantage in obtaining initial numbering codes based on the new rules adopted by the FCC. In order to continue to encourage companies to install their own facilities, it is necessary for the FCC to assure such carriers that they will have timely access to numbering resources when they are in the position to request NXX codes.

III. The FCC Should Not Allow the Maryland Public Service Commission to Ration Numbers for Six Months Following the Implementation of Area Code Relief

The PSC requests that the Commission allow it to maintain rationing procedures for a period of six months following the implementation of area code relief. However, the FCC rules require that if the PSC were to implement an area code overlay, codes from the overlay must be assigned on a “first-come, first-serve, basis.”⁴ In order to grant the PSC authority to engage in rationing, the FCC

³ See *Numbering Resource Optimization*, Report and Order and Further Notice of Proposed Rulemaking (“*Numbering Order*”), 15 FCC Rcd 7574 (2000), at ¶ 239.

⁴ 47 C.F.R. § 52.19(c)(i); see also *id.* at § 52.19(a) (limiting the authority of state commissions to various forms of area code relief which does not include rationing of numbering resources).

would have to waive its rules that prevent state commissions from rationing numbering resources. While the FCC has done so in limited circumstances, the FCC has only allowed it when a state commission has demonstrated that “extenuating and unique” circumstances warrant deviation.⁵ The PSC’s *Petition* does not address the fact that granting it such authority would require waiver of FCC rules and does not present any argument as to what “extenuating and unique” circumstances would justify waiver. As a result, the FCC must deny the PSC’s request for rationing numbering resources following the implementation of area code relief.

Aside from the fact that the PSC did not make the requisite showing of “extenuating and unique” circumstances that would justify waiver of the FCC’s rules, it is unclear whether rationing is needed due to the FCC’s adoption of new rules governing the distribution of numbering resources.⁶ Under the new rules adopted by the FCC, carriers must verify their need in order to obtain both initial and growth numbering codes. Carriers receive initial codes if the carrier is able to provide service within sixty (60) days of activating the numbering resources. Growth codes are distributed to carriers that have no more than a six-month supply of numbering codes.⁷ The Commission further determined that carriers should receive numbering resources on a “first-come, first-served basis.”⁸ Thus, carriers receiving numbering resources are subject to a regime that requires an extensive demonstration of need. To further restrict the ability of carriers to obtain numbering resources through the use of rationing procedures threatens to severely restrict the ability

⁵ See, e.g., *California Delegation Order*, at ¶ 38.

⁶ See *Numbering Order*, at ¶¶ 88-91.

⁷ See 47 C.F.R. § 52.15 (2000).

⁸ See *Numbering Order*, at ¶ 92.

of both new market entrants and other competitive providers to provide innovative services and to respond to the demands of the marketplace.

IV. The FCC Should Deny the Maryland Public Service Commission's Request to Establish Fill Rates

The PSC has requested authority to establish fill rates that must be met, even if the area code is not in jeopardy, before a carrier may acquire a growth NXX code in a rate center where it already has a code.⁹ While it may appear relatively harmless in individual cases to delegate numbering authority to state commissions that are more familiar with local circumstances, the overall effect of these delegations is to create up to 50 different sets of rules that a carrier like Starpower must comply with. Furthermore, the FCC has already determined that number code allocation standards should be governed by national rule and has sought comment on the appropriate utilization level.¹⁰ As set out in the FCC's *Numbering Order*, the FCC will establish a national utilization threshold for non-pooling carriers by January 1, 2001.¹¹ Rather than delegate authority to the PSC now which will be preempted in the near future, the FCC should deny the PSC's request.

V. The FCC Should Deny the Maryland Public Service Commission's Requests for Authority that it Already has been Granted

The PSC has requested a number forms of authority that the FCC has already delegated to the states or implemented on the national level. The PSC's petition asks for authority to order mandatory number utilization and forecast reporting by all carriers in order to monitor usage and to enforce standards.¹² However, in the *Numbering Order*, the FCC established number utilization and

⁹ See *Petition*, at 4.

¹⁰ See *Numbering Order*, at ¶ 115.

¹¹ See *id.* (stating that the FCC would establish a national utilization threshold for non-pooling carriers by January 1, 2001).

¹² See *Petition*, at 4.

forecast reporting requirements, the FCC also superceded previous grants of delegated authority to state commissions to collect such data, and allowed state commissions access to the data collected at the national level.¹³ Thus, the FCC should reject the PSC's request for such authority.

The PSC has also requested authority to investigate whether code holders have activated NXXs assigned to them within the relevant time frames and for the authority to engage in number reclamation activities.¹⁴ In the FCC's *Numbering Order*, the FCC granted state commissions the ability to engage in number reclamation activities.¹⁵ To the extent that the PSC is requesting authority beyond that granted to state commissions in the *Numbering Order*, the FCC should reject the PSC's request as the PSC has not made an adequate showing of why it needs additional authority. Otherwise, the FCC should reject the request as the PSC already possesses the requisite authority to engage in number reclamation.

Starpower recommends that the FCC direct the PSC to confer with other state commissions in adopting number reclamation rules. Similar to the discussion concerning fill rates, carriers are facing different rules concerning number reclamation in each separate jurisdiction. The FCC has provided the states with no uniform guidelines in implementing number resource reclamation, only the directive that state commissions allow carriers "opportunity to explain" their failure to activate central office codes within the requisite time frame.¹⁶ As a result, Starpower must now monitor state regulatory efforts to adopt guidelines in reclaiming number resources. Where given the opportunity, Starpower will participate in state proceedings that consider number reclamation guidelines in the

¹³ See *Numbering Order*, at ¶¶ 40, 76.

¹⁴ See *Petition*, at 5-6.

¹⁵ See *Numbering Order*, at ¶¶ 237-241.

¹⁶ See *id.* at ¶ 239.

hopes of establishing some kind of uniformity in the process and ensuring that the proposed procedures conform with federal law.¹⁷ This, in itself, is a costly process with no guaranteed results. However, many states simply adopt policies without any input from the industry and without regard to what other jurisdictions may do, thus increasing both the cost and complexity of regulatory compliance.

Finally, the PSC requests that the FCC grant it authority to order sequential number assignment.¹⁸ The *Numbering Order* already requires carriers to assign numbers sequentially except in limited circumstances.¹⁹ Thus, there is no need for the FCC to grant the PSC such authority.

VI. Conclusion

For the reasons detailed in its prior filings in regard to various state petitions seeking additional delegated numbering authority, Starpower respectfully asks that the FCC implement number pooling at the national level. Since the FCC has already granted a number of requests by other state commissions, Starpower requests that the Commission focus on certain implementation issues that have caused carriers problems in other states. Thus, the Commission should clearly limit the authority to *fully* implement a number pooling trial in a particular MSA before expanding to a separate MSA. Additionally, the FCC should direct the PSC to reserve a pool of numbering resources for carriers that actually construct their own networks. Further, the Commission should deny the PSC's request to maintain rationing procedures for six months following area code relief and should reject the PSC's request to establish fill rates. Finally, the FCC should deny the PSC's

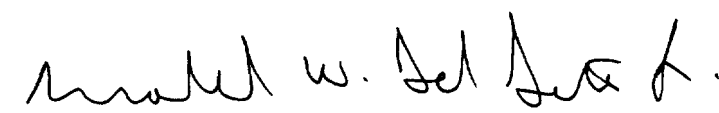
¹⁷ Recently, the New York Public Service Commission proposed guidelines for number reclamation procedures and solicited industry comment. It is unclear whether other state commissions will solicit comment from the industry or even attempt to adopt uniform guidelines for reclamation procedures.

¹⁸ *See Petition*, at 6.

¹⁹ *See Numbering Order*, at ¶¶ 244-246.

request for authority that has either already been granted to the state commission or superceded at the national level. This includes the request to require the submission of number utilization and forecast reports, number reclamation authority and sequential number assignment. In terms of number reclamation, Starpower asks that the FCC encourage state commissions to adopt uniform rules.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Russell M. Blau", written over a horizontal line.

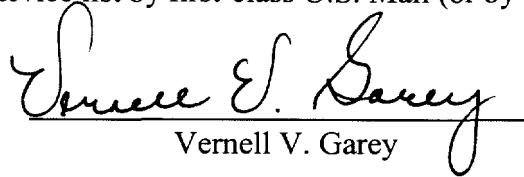
Joseph Kahl
Starpower Communications, LLC
105 Carnegie Center
Princeton, NJ 08540
(609) 734-7502 (Tel.)
(609) 734-6167 (Fax)

Russell M. Blau
Ronald W. Del Sesto, Jr
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
(202) 424-7500 (Tel.)
(202) 424-7645 (Fax)

Dated: October 25, 2000

CERTIFICATE OF SERVICE

I, **Vernell V. Garey**, hereby certify that on October 25, 2000 the foregoing document was served on the individuals listed on the following service list by first-class U.S. Mail (or by overnight delivery/hand-delivery, as marked*).


Vernell V. Garey

(*BY HAND-DELIVERY)

Magalie Roman Salas, Commission Secretary*
Office of the Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Suite TW-A325
Washington, DC 20554

Jeanne Grimes*
Common Carrier Bureau
Federal Communications Commission
The Portals
445 - 12th Street, S.W.
Washington, DC 20554

Diane G. Harmon, Deputy Chief*
Common Carrier Bureau
Network Services Division
Federal Communications Commission
Suite 6-A207
445 - 12th Street, S.W.
Washington, DC 20554

Yog R. Varma, Deputy Chief*
Common Carrier Bureau
Federal Communications Commission
Suite 500H
445 - 12th Street, S.W.
Washington, DC 20554

International Transcription Service*
1231 - 20th Street, N.W.
Washington, DC 20054

Lawrence E. Strickling, Chief*
Common Carrier Bureau
Federal Communications Commission
Suite 500H
445 - 12th Street, S.W.
Washington, DC 20554

L. Charles Keller, Chief*
Common Carrier Bureau
Network Services Division
Federal Communications Commission
Suite 6-A207
445 - 12th Street, S.W.
Washington, DC 20554

Michael F. Altschul
Randall S. Coleman
Lolita D. Smith
Cellular Telecommunications Industry Association
Suite 800
1250 Connecticut Avenue, N.W.
Washington, DC 20036

Peter Arth, Jr.
Lionel B. Wilson
Helen M. Mickiewicz
Attorneys for the Public Utilities Commission
State of California
505 Van Ness Avenue
San Francisco, CA 94102

Maryland Office of People's Counsel
6 St. Paul Street
Suite 2102
Baltimore, MD 21202-6806

Carol Ann Bischoff
Terry Monroe
Competitive Telecommunications Association
1900 M Street, N.W., Suite 800
Washington, DC 20036

Michael A. Sullivan
15 Spencer
Somerville, MA 02144

E. Barclay Jackson
New Hampshire Public Utilities Commission
8 Old Suncook Road
Concord, NH 03301

Gary Crabtree
Belton School District #124
Director Finance/Support Services
110 West Walnut
Belton, MO 64012

Kathryn Marie Krause
Eldridge A. Stafford
US West Communications, Inc.
1020 - 19th Street., N.W., Suite 700
Washington, DC 20036

Norman D. Cunningham
Assistant Superintendent, Support Services
Cypress-Fairbanks Independent School District
12510 Windfern Road
Houston, TX 77064-3108

Maine Public Advocate
State House Station 112
Augusta, ME 04333

Jay C. Keithley
Attorney for Sprint Corporation
401 - 9th Street, N.W.
Suite 400
Washington, DC 20004

Jack A. Holzer
Communications Services Manager
Johnson County Sheriff's Office
125 North Cherry Street
Olathe, KS 66061

Emprise Bank
3900 West Central Avenue
Wichita, KS 67203-4987

Howard J. Symons
Sara F. Seidman
Amy L. Bushyeager
Counsel for AT&T Corp.
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, PC
701 Pennsylvania Avenue, N.W.
Suite 900
Washington, DC 20004

Sandra K. Williams
Attorney for Sprint Corporation
6360 Spring Parkway
Mailstop: KSOPHE0302-3D203
Overland Park, KS 66251

Lisa L. Karstetter
Programmer/Telecom Analyst
City of Olathe, Kansas
P.O. Box 178
100 West Santa Fe Drive
Olathe, KS 66061

R. Gregg Reep, Mayor
The City of Warren
P.O. Box 352
Warren, Arkansas 71671

Florida Office of Public Counsel
c/o Florida Legislature
111 West Madison Street, #812
Tallahassee, FL 32399-1400

J.G. Harrington
Laura Roecklein
Counsel for Cox Communications, Inc.
Dow, Lohnes & Albertson, PLLC
1200 New Hampshire Ave, N.W.
Suite 800
Washington, DC 20036

Susan M. Eid
Richard A. Karre
MediaOne Group, Inc.
1919 Pennsylvania Ave, N.W.
Suite 610
Washington, DC 20006

Jean Dols
Interim C.I.O.
Harris County Hospital District
P.O. Box 66769
Houston, TX 77266

Indiana Office of Utility Consumer Counsel
100 North Senate Avenue
Room N501
Indianapolis, IN 46204-2215

George N. Barclay
Michael J. Ettner
General Services Administration
1800 F Street, N.W.
Room 4002
Washington, DC 20405

John M. Goodman
Attorney for Bell Atlantic
1300 I Street, N.W.
Suite 400-West
Washington, DC 20005

Lawrence G. Malone
Public Service Commission of
the State of New York
Three Empire State Plaza
Albany, NY 12223-1350

John W. Hunter
Lawrence E. Sarjeant
Linda L. Kent
Julie E. Rones
Keith Townsend
United States Telecom Association
1401 H Street, N.W.
Suite 600
Washington, DC 20005

Jennifer Fagan
Office of Regulatory Affairs
Public Utility Commission of Texas
1701 North Congress Avenue
Austin, TX 78711

John F. Raposa
GTE Service Corporation
600 Hidden Ridge, HQE03J27
P.O. Box 152092
Irving, TX 75015

Texas Office of Public Utility Counsel
1701 North Congress Avenue.
Suite 9-180
P.O. Box 78701
Austin, TX 78701

M. Susan Savage, Mayor
Office of the Mayor
City of Tulsa
200 Civic Center
Tulsa, OK 74103

David Cosson
John Kuykendall
Counsel for Rural Independent Competitive Alliance
Kraskin, Lesse & Cosson, LLP
2120 L Street, N.W.
Suite 520
Washington, DC 20037

Louise M. Tucker
Telcordia Technologies, Inc.
2020 K Street, N.W.
Suite 400
Washington, DC 20006

James T. Hannon
Counsel for US West Communications, Inc.
1020 19th Street, N.W.
Suite 700
Washington, DC 20036

Joseph Assenzo
Sprint PCS
4900 Main Street, 11th Floor
Kansas City, MO 64112

Judith St. Ledger-Roty
Todd D. Daubert
Jennifer Kashatus
Counsel for Personal Communications
Industry Association
Kelley Drye & Warren LLP
1200 - 19th Street, N.W.
Suite 500
Washington, DC 20036

Sue Frank, Mayor
Raytown
10000 East 59th Street
Raytown, MO 64133

John S. DiBene
Roger K. Toppins
Alfred G. Richter, Jr.
Attorneys for SBC Communications, Inc.
1401 I Street, N.W.
Suite 1100
Washington, DC 20005

Michael S. Slomin
Telcordia Technologies, Inc.
445 South Street, MCC-1J130R
Morristown, NJ 07960

Leon Kestenbaum
Counsel for Sprint
401 - 9th Street, N.W.
Suite 400
Washington, DC 20004

Henry G. Hultquist
Mary De Luca
Chuck Goldfarb
Mark T. Bryant
MCI WorldCom, Inc.
1801 Pennsylvania Avenue., N.W.
Washington, DC 20006

James S. Blaszk
Counsel for Ad Hoc Telecommunications
Users Committee
Levine, Blaszk, Block & Boothsby LLP
2001 L Street, N.W.
Suite 900
Washington, DC 20036

Mark C. Rosenblum
Roy E. Hoffinger
James H. Bolin, Jr.
AT&T Corporation
295 North Maple Avenue
Room 1130M1
Basking Ridge, NJ 07920

Marlene L. Johnson
Chairperson
District of Columbia Public Service Commission
717 - 14th Street, N.W.
Washington, DC 20005

James Bradford Ramsay
National Association of Regulatory
Utility Commissioners
1101 Vermont Avenue, N.W.
Suite 200
Washington, DC 20005

Michael B. Adams, Jr.
Benjamin H. Dickens, Jr.
Blooston, Mordkofsky, Jackson & Dickens
2120 L Street, N.W.
Washington, DC 20037

Jonathan M. Chambers
Vice President-Federal Regulatory Affairs
Sprint PCS
401 - 9th Street, N.W.
Suite 400
Washington, DC 20004

Peggy Arvanitas
P.O. Box 8787
Seminole, FL 33705

Teya M. Penniman
Attorneys for Oregon Public Utility Commission
Room 330
550 Capitol Street, N.E.
Salem, OR 97310-1380

Jonathan M. Askin
Teresa K. Gaugler
Association for Local Telecommunications Services
888 - 17th Street, N.W.
Suite 900
Washington, DC 20006

Richard Askoff
Joe A. Douglas
National Exchange Carriers Association, Inc.
80 South Jefferson Road
Whippany, NJ 07981

Pennsylvania Office of Consumer Advocate
555 Walnut Street
54th Floor, Forum Place
Harrisburg, PA 17101

Jonathan E. Canis
Todd D. Daubert
Counsel for 2nd Century Communications, LLP
Kelley, Drye & Warren LLP
1200 - 19th Street, N.W.
Suite 500
Washington, DC 20036

Robert J. Aamoth
Todd D. Daubert
Attorneys for Competitive Telecommunications
Association
Kelley, Drye & Warren LLP
1200 19th Street, N.W.
Suite 500
Washington, DC 20036

Missouri Office of Public Counsel
P.O. Box 7800
Jefferson City, MO 65102

Robert L. Hoggarth
Harold Salters
Personal Communications Industry Association
500 Montgomery Street
Suite 700
Alexandria, VA 22314-1561

Cynthia B. Miller
Bureau of Intergovernmental Liaison
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Joel H. Cheskis
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101

John T. Scott, III
Vice President and Deputy General Counsel
Regulatory Law
Verizon Wireless
1001 Pennsylvania Ave, N.W.
Washington, DC 20004

Robert Foosaner
Lawrence R. Krevor
Laura L. Holloway
James B. Goldstein
Nextel Communications, Inc.
2001 Edmund Halley Drive
Reston, VA 20191

Marc D. Poston
Missouri Public Service Commission
301 West High Street
Room 750
Jefferson City, MO 65101

The Office of People's Counsel
District of Columbia
1133 - 15th Street, N.W.
Suite 500
Washington, DC 20005

Andre J. Lachance
GTE Service Corporation
1850 M Street, N.W.
Washington, DC 20036

L. Marie Guillory
Daniel Mitchell
National Telephone Cooperative Association
4121 Wilson Boulevard, 10th Floor
Arlington, VA 22203

Elizabeth H. Liebschutz
State of New York Dept. of Public Service
Three Empire State Plaza
Albany, NY 12223

Brian Thomas O'Connor
Robert A. Calaff
Vicestream Wireless Corporation
1300 Pennsylvania Avenue, N.W.
Suite 700
Washington, DC 20004

The Utility Reform Network
711 Van Ness Avenue
Suite 350
San Francisco, CA 94102

Trina Bragdon, Esq.
Maine Public Utilities Commission
242 State Street
State House Station 18
Augusta, ME 04333

James D. Mullins
Emergency Medical Services Authority
1417 North Lansing Avenue
Tulsa, OK 74106

Richard W. Rindler
Jeanne W. Stockman
Counsel for Allegiance Telecom, Inc.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, DC 20007

James U. Troup
Robert H. Jackson
Attorneys for Iowa Telecommunications
Services, Inc.
Arter & Hadden LLP
1801 K Street, N.W., Suite 400K
Washington, DC 20006-1301

Deanne M. Brutts
Frank B. Wilmarth
Bohdan R. Pankiw
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

Russell C. Merbeth
Daniel F. Gonos
Winstar Communications, Inc.
1146 - 19th Street, N.W.
Washington, DC 20036

Douglas I. Brandon
AT&T Wireless Services, Inc.
1150 Connecticut Avenue, N.W.
Suite 400
Washington, DC 20036

Lawrence Ausubel, Co-President
Peter Cramton, Chairman
Paul Milgrom, Co-President
Counsel for Maine Public Utilities Commission
Spectrum Exchange Group, LLC
2920 Garfield Terrace, N.W.
Washington, DC 20008

Cheryl A. Tritt
Frank W. Krogh
Counsel for NeuStar, Inc.
Morrison & Foerster LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, DC 20006-1888

California Office of Ratepayers Advocates
505 Van Ness Avenue
Room 4202
San Francisco, CA 94102

Daniel Gonzalez
R. Gerard Salemme
Esther Northrup
Nextlink Communications, Inc.
1730 Rhode Island Ave, N.W.
Suite 1000
Washington, DC 20036

Richard W. Rindler
Ronald W. Del Sesto, Jr., Esq.
Counsel for RCN Telecom Services, Inc.
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007

Charles Ghini
Deputy Chief Information Officer
State Technology Officer
Florida Department Management Services
4030 Esplanade Way, Suite 180
Tallahassee, FL 32399-0950

Brian Conboy
Thomas Jones
Counsel for Time Warner Telecom
Willkie Farr & Gallagher
Three Lafayette Center
1155 - 21st Street, N.W.
Washington, DC 20036

Daniel M. Waggoner
Robert S. Tanner
Dale Dixon
Davis Wright Tremaine, LLP
1500 K Street, N.W.
Washington, DC 20005

Marsha N. Cohan
Professor of Law
Hastings College of Law
University of California
200 McAllister Street
San Francisco, CA 94102